

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

CLEO FIDDEMON, :  
 :  
Plaintiff : CIVIL ACTION NO. 3:21-144  
 :  
v. : (JUDGE MANNION)  
 :  
PATROLMAN ROBERT MAHOLIK, :  
PATROLMAN JOSEPH WOZNIAK, :  
and WILKES-BARRE TOWNSHIP, :  
 :  
Defendants :

**ORDER**

In accordance with the Memorandum issued this date, **IT IS HEREBY ORDERED THAT:**

1. The defendants' motion to dismiss, **(Doc. 7)**, plaintiff's amended complaint, **(Doc. 4)**, pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), is **GRANTED IN PART** and, **DENIED IN PART**.

2. The defendants' motion to dismiss plaintiff's false arrest claim against the defendant officers in Count I is **DENIED**.

3. The defendants' motion to dismiss plaintiff's 4<sup>th</sup> Amendment excessive force claim against the defendant officers in Count I is **DENIED**.

4. The plaintiff's claims in Count I, to the extent that they are asserted against the individual defendants in their official capacities, are **DISMISSED**.

Thus, the plaintiff's false arrest and excessive force claims against the defendant officers in Count I will proceed only to the extent that they are sued in their individual capacities.

5. The defendants' motion to dismiss the plaintiff's 5<sup>th</sup> Amendment due process claim in Count II is **GRANTED**.

6. The defendants' motion to dismiss plaintiff's 14<sup>th</sup> Amendment due process claim in Count II is **GRANTED**.

7. Count II of the amended complaint is **DISMISSED IN ITS ENTIRETY WITH PREJUDICE**.

8. The defendants' motion to dismiss plaintiff's claims for injunctive relief is **GRANTED**.

9. The defendants' motion to dismiss plaintiff's claims for declaratory judgment is **GRANTED**.

10. The defendants' motion to dismiss plaintiff's municipal liability claims against W-B Twp. in Count I is **DENIED**.

11. The plaintiff's claims for punitive damages against W-B Twp. and against the defendant officers in their official capacities are **DISMISSED WITH PREJUDICE**.

12. To the extent plaintiff seeks punitive damages against defendant officers in their individual capacities, defendants' motion to dismiss is **DENIED.**

*s/Malachy E. Mannion*  
**MALACHY E. MANNION**  
**United States District Judge**

**DATED: April 13, 2022**

21-144-01-Order